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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/825,920 | 04/15/2004 | Dale M. Pitt | BOEI-1-1250 | 8932 |

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EXAMINER

COLLINS, TIMOTHY D

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3643

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|---------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/825,920 | Applicant(s) PITT, DALE M. | |
| | Examiner Timothy D. Collins | Art Unit 3643 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-60 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

NOTE: The examiner acknowledges the applicants election of the paper filed 10/24/05, however the applicant has elected one species and amended the claims to include the non-elected species. Therefore the examiner cannot be sure which species the applicant wishes to pursue. Because of the ambiguity of the response, the restriction is clarified below and restated. Election must be made to a single species as seen in the requirement below. See specifically the section requiring election of either the strain gauge or the accelerometer for claims 37 and 54. Also note that the requirement lists claim numbers for the applicant's convenience, however the applicant must be sure that the election conforms to the subject of the requirement not just the specific example of the claim listed for the applicant's convenience. While any delay in prosecution is regrettable, the restriction requirement is restated and clarified below. The previous requirement still standing.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-13,26-38,51-60, drawn to an actuator system, classified in class 244, subclass 75R.
 - II. Claims 14-25,39-50, drawn to a method of actuator control, classified in class 244, subclass 175.

The inventions are distinct, each from the other because of the following reasons:

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2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method may be performed manually.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

NOTE: When invention I of the above is chosen, the following election of species applies and must also be chosen. See further down the action for the election of species if Invention II is chosen.

5. This application contains claims directed to the following patentably distinct species of the claimed invention:

- a. Species a: the second actuator is an x-frame actuator (like claims 4 and 29)
- b. Species b: the second actuator is a piezo-electric cylinder actuator (like claims 5 and 30)

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6. When one of the above Species has been chosen, the following Sub-species must also be chosen. From claim 34.

i. Sub-species i: the component is a rudder, stabilizer, or control surface.

ii. Sub-species ii: the component is a wing.

7. When one of the above sub-species has been chosen, the following sub-sub-species must also be chosen. **Similar to claims 37 and 59.**

(1) Sub-Sub-species 1: the motion sensor is an accelerometer

(2) Sub-Sub-species 2: the motion sensor is a strain gauge

8. **NOTE: If the method of invention II is chosen, the following election of species applies and one of the following must also be chosen.**

9. This application contains claims directed to the following patentably distinct species of the claimed invention:

c. Species c: the second actuator is an x-frame actuator (like claim 17)

d. Species d: the second actuator is a piezo-electric cylinder actuator (like claim 18)

10. When one of the above Species has been chosen, the following Sub-species must also be chosen. From claims 47 and 48.

iii. Sub-species iii: sensing a motion includes sensing the deflection of a component.

- iv. Sub-species iv: sensing a motion includes determining an acceleration.

NOTE: If the applicant does not choose from the appropriate areas above the reply will be considered non-responsive.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

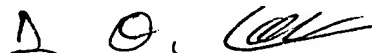
case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy D. Collins whose telephone number is 571-272-6886. The examiner can normally be reached on M-F, 7:00-3:00, with every other Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Timothy D. Collins
Patent Examiner
Art Unit 3643

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